13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 786

PITT RIVER POWER COMPANY (A CORPORATION),
Petitioner,

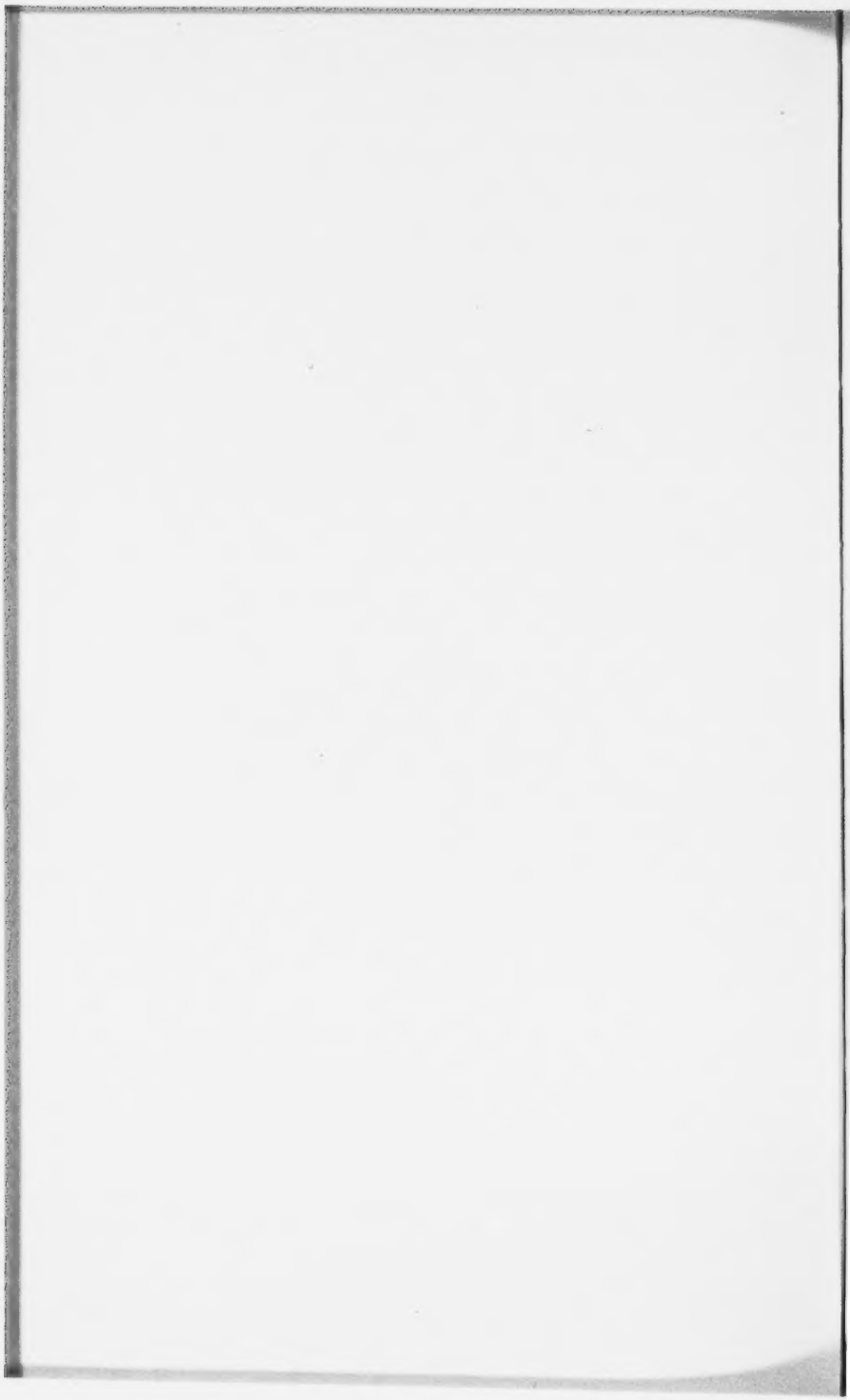
against

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT OF PETITION.

SANFORD H. E. FREUND,
Counsel for Petitioner.

CARL A. MEAD,
Of Counsel.



INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Matter involved	1
Statute involved	2
Question presented	2
Specification of error	3
Reason for granting the writ	3
Brief in support of petition	5
Opinions below	5
Jurisdiction	5
Question presented	5
Argument	6
Appendix—Relevant part of statute involved	17

Table of Cases Cited.

Danforth v. *United States*, 308 U. S. 271	7
Goodman v. *United States*, 28 Fed. Supp. 497	9
Jacobs v. *United States*, 290 U. S. 13	6
Matter of Widening Wall Street, 17 Barb. 617	14
Phelps v. *United States*, 724 U. S. 341	6
Shoemaker v. *United States*, 147 U. S. 282	9, 14
Shoshone Tribe v. *United States*, 299 U. S. 476	6
United States v. *Great Falls Mfg. Co.*, 112 U. S. 645	14
United States v. *Lynah*, 188 U. S. 445	9
United States v. *Miller*, 63 Sup. Ct. 276	3, 10
United States v. *North American Co.*, 253 U. S. 300	14
United States v. *Sponenbarger*, 308 U. S. 256	7

Statutes Cited.

Act of February 13, 1925 (Ch. 299, Sec. 3(c), 43 Stat. 939; 28 U. S. C. A., Sec. 288)	5
Judicial Code, Sec. 145(1), 28 U. S. C. A., Sec. 250	6
Judicial Code, Sec. 156, R. S., Sec. 1069, 28 U. S. C. A., Sec. 262	7

Page

Mississippi River Flood Control Act (May 15, 1928 Ch. 569, 45 Stat. 534) 8
River and Harbor Act of March 3, 1899 (Ch. 425, Sec. 9, 30 Stat. 1151, 33, U. S. C. A., Sec. 401) 10
River and Harbor Act of July 18, 1918 (Ch. 155, Sec. 5 (40 Stat. 904, 911)) 6
River and Harbor Act of August 26, 1937, Ch. 832 (50 Stat. 844, 850) 2

TEXT CITED.

1 Lewis on Eminent Domain (3rd Ed.) Sec. 80 9
2 Lewis on Eminent Domain (3rd Ed.), Sec. 742, p. 1321 13
1 Nichols on Eminent Domain (2d Ed.), Sec. 221, p. 676 12
Orgel on Valuation under Eminent Domain, Secs. 103, 104, p. 351 12

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PITT RIVER POWER COMPANY (A CORPORATION),
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against

THE UNITED STATES.

PETITION OF PLAINTIFF FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Petition.

Petitioner, Pitt River Power Company, prays that a writ of certiorari issue to review the judgment of the Court of Claims of the United States entered in the above case December 7, 1942.

Matter Involved.

Action by the Pitt River Power Company against United States for the recovery of just compensation for its property taken by the United States for the Central Valley Reclamation Project in California.

The Reclamation Project was approved by the President pursuant to Act of Congress on December 2, 1935, by direct order and on August 26, 1937, an Act of Congress authorized the plan for the Central Valley Project (a damming of the Sacramento River) and empowered the Secretary of the Interior to proceed with its development. Construction work began on October 19, 1937, has proceeded continuously since that date, and is now about three-quarters completed.

The Petitioner is the owner of lands bordering on the Pitt River, a tributary of the Sacramento River, which will be flooded by the proposed dam. These lands were acquired by Petitioner for reservoir and hydroelectric development and there were two dam sites on the lands. The action was begun by the filing of a petition on November 29, 1941.

On April 18, 1942, the Attorney General demurred to the petition on the ground that it failed to state a cause of action, the claim being that there will be no taking of the property of the Petitioner until its lands are *actually* flooded. The demurrer was sustained and the petition was dismissed by the Court of Claims on December 7, 1942.

Statute Involved.

River and Harbor Act of August 26, 1937, Ch. 832 (50 Stat. 844, 850).

For relevant part, see Appendix, post, pp. 17-18.

Question Presented.

The question presented is whether the property of the claimant was taken by the approval of the plan, the definite location of the improvement and the Government's commitment to and authorization of the project by the Act of August 26, 1937, or otherwise prior to or upon the beginning of this action so as to give the Petitioner a right of

action, or whether, as held by the Court of Claims, there will be no taking of the Petitioner's property and, consequently, no right of action therefor, until it shall have been *actually* flooded by water set back by the Shasta Dam.

Specification of Error.

A Federal question was decided by the Court of Claims in a way probably in conflict with the applicable decisions of this Court and particularly with the decision in the subsequent case of *The United States of America, Petitioner,* v. *Victor N. Miller, and Others* (63 Sup. Ct. Rep. 276), decided at this Term of this Court on January 4, 1943, after the decision of the Court of Claims.

Reason for Granting the Writ.

In that case this Court held, in a case involving property condemned by the United States for the same Central Valley Project, that, in arriving at market value, any increment of value due to the approval of the plan and authorization of the project arising after the Act of August 26, 1937, must be disregarded. It follows that any decrease in the value of the Petitioner's property due to the approval of the plan and authorization of the project and definite commitment of the Government thereto, by the Act of August 26, 1937, arising after the adoption of that Act, must be disregarded in determining the just compensation to be given therefor.

The petition alleges that the property had substantial value for reservoir, dam site and water power purposes before the Act was passed. That value was destroyed by the passage of the Act, which involved the flooding of Petitioner's land and dam sites. A cause of action then arose in favor of the Petitioner against the Government to re-

cover the just compensation guaranteed by the Fifth Amendment.

Wherefore it is respectfully submitted that the petition should be granted.

Washington, D. C., March 4, 1943.

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